IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 933 of 1983

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 :: NO

RATILAL M MODI

Versus

NAVNITLAL S SHAH (DELETED)

Appearance:

1. Civil Revision Application No. 933 of 1983

MR PR THAKKAR for Petitioners

Respondents Nos. 1-2 :: Deleted

Respondent No. 3 :: Served

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 01/10/2002

ORAL JUDGEMENT

The present Revision Application preferred under section 29 (2) of the Bombay Rents, Hotel & Lodging House

Rates Control Act, 1947 [hereinafter referred to as, "the Rent Act"] arises from the judgment and order dated 2nd November, 1982 passed by the learned Assistant Judge, Vadodara in Regular Civil Appeal No. 326 of 1980. The petitioner before this Court is the respondent-Defendant.

The premises in question is a shop situated at Nava Bazaar, Vadodara. The plaintiffs are three of the co-owners of the suit shop. The suit shop was leased to the defendant for a monthly rent of Rs. 15/=. The defendant was in arrears of rent. The plaintiffs, therefore, gave notice as envisaged in sub-section 2 of section 12 of the Rent Act demanding the arrears of rent due since 1st November, 1959 and terminating the tenancy of the defendant. The suit notice was not responded to by the defendant. The plaintiffs instituted Rent Suit No. 3568 of 1975 in the court of Small Causes at Vadodara for recovery of possession of the suit shop and for arrears of rent for a period of three years preceding the date of the suit. The suit was contested by the defendant by filing written statement [Exh. 12]. The defendant challenged the maintainability of the suit on the ground that the plaintiffs were not the only owners of the suit shop. The suit filed by some of the co-owners, according to the defendant, was not maintainable. The defendant denied that he was in arrears of rent since 1st November, 1959. He averred that he had paid the rent due till 17th June, 1966 to the plaintiff. Since then, he had spent a sum of Rs. 3,651/- for repairs of the suit shop and another shop belonging to the plaintiffs, at the instance of the plaintiffs. The said sum of Rs. 3,651/= was agreed to be adjusted against the future rent. The defendant, therefore, denied that he was in arrears of rent, as alleged. The defendant also raised dispute as to the standard rent of the suit shop and claimed that the standard rent of the suit shop was Rs. 5/= per month.

The suit was tried by the learned Additional Judge, Small Causes Court, Vadodara. Under the judgment and order dated 8th July, 1980, the learned trial Judge held that the standard rent of the suit shop was Rs. 15/= per month; the defendant was in arrears of rent since 18th June, 1966; that the defendant was not ready and willing to pay the rent. With respect to the payment of Rs. 3,651/= alleged to have been made by the defendant on behalf of the plaintiffs, the Court held in favour of the plaintiffs. However, the learned Judge held that the suit notice given by some of the co-owners of the suit shop was not legal and valid and the suit instituted by such co-owners was also not maintainable.

For this reasoning, the learned Judge relied upon the judgment of this Court in the matter of Nanalal Girdharlal & Anr. v. Gulamnabi Jamalbhai Motorwala & Ors. [13 GLR 880]. The learned trial Judge, therefore, fixed the standard rent at Rs. 15/= per month but refused the decree for possession and also for arrears of rent.

Feeling aggrieved, the plaintiffs preferred Civil Appeal No. 326 of 1980 in the Court of District Judge, Vadodara. The appeal was heard by the learned Extra-Assistant Judge, Vadodara and was allowed under the impugned judgment and order dated 2nd November, 1982. The learned Judge decreed the suit for possession. Feeling aggrieved, the defendant has preferred the present Revision Application.

As recorded hereinabove, the issue as to the arrears of rent and the readiness and willingness to pay such rent had been decided by the learned trial Judge against the defendant, however, the defendant did not prefer appeal against the judgment of the trial Court. Hence, in my opinion, the findings recorded by the learned trial Judge against the defendant have become final and cannot be questioned in the present Revision Application. However, it may be noted that the defendant had admitted that he had not paid rent due since 18th June, 1966. His defence that such rent was required to be adjusted against the sum of Rs. 3,651/= paid by him towards the repairs of the suit shop has not been believed by the learned trial Judge. Even on the date of the judgment, the defendant was found to be in arrears of rent by a sum of Rs. 1,410/=. The learned Judge also was of the opinion that but for the validity of the suit notice and the maintainability of the suit, the plaintiffs were entitled to recovery of the possession of the suit shop and the arrears of rent.

As to the validity, the suit notice was held to be invalid only on the ground that the same was given by some of the co-owners and not by all of them. Similarly, the suit was held to be not maintainable because the same was instituted by only some of the co-owners and not by all of them. However, the law settled by this Court in the above referred judgment of Nanalal Girdharlal & Anr. [Supra] has been, in view of the subsequent judgments of the Hon'ble Supreme Court, held to be no longer a good law. In the matter of Amrutlal Saremal & Ors. v. Smt. Deviben Dullabhbhai Shandari & Ors. [23 (1) GLR 208], this Court relying upon the judgments of the Hon'ble Supreme Court in the matters of Sri Ram Pasricha vs.

Jagannath & Ors. [AIR 1976 SC 2335] and of Smt. Kanta Goel v. B. P Pathak & Ors. [AIR 1977 SC 1599] has held that the law propounded in the matter of Nanalal Girdharlal & Anr. {Supra} was no longer a good law. In the matter of Sri Ram Pasricha [Supra], the Hon'ble Supreme Court has held that, "Jurisprudentially it is not correct to say that a co-owner of a property is not its owner. He owns every part of the composite property along with others and it cannot be said that he is only a part-owner or a fractional owner of the property. The position will change only when partition takes place. It is, therefore, not possible to accept the submission that the plaintiff who is admittedly the landlord and co-owner of the premises is not the owner of the premises within the meaning of Section 13 (1)(f). It is not necessary to establish that the plaintiff is the only owner of the property for the purpose of Section 13 (1)(f) as long as he is a co-owner of the property being at the same time the acknowledged landlord of the defendants." The said view has been reiterated by the Hon'ble Supreme Court in the matter of Kanta Goel [Supra]. The Hon'ble Court said that, "...The law having been thus put beyond doubt, the contention that the absence of the other co-owners on record disentitled the first respondent from suing for eviction, fails." Moreover, in the present case, admittedly, the defendant had paid the rent upto 17th June, 1966 to the plaintiff no. 1 and the plaintiff no. 1 had accepted the rent. As the law is now well-settled, a suit for recovery of possession by some of the co-owners is maintainable and suit notice given by such co-owners also is legal and valid. The Court below, therefore, was right in upsetting the decision of the learned trial Judge and in decreeing the suit for recovery of possession.

The defendant also questioned the validity of the suit notice on the ground that the suit notice in terms did not say that the defendant was afforded the last opportunity to pay the rent. In support of the submission, the defendant relied upon the judgment of this Court in the matter of Khimji Bhimji Majitha v. Taraben Lalji Soni [23 (2) GLR 114]. It may, however, be noted that the said judgment has been explained by this Court in the matter of Rambhai Jhenidas Panchal v. Lalitaben Wd/o. Ramanlal Panchal [23 (2) GLR 545]. It has been held that the suit notice does not require to specifically mention that it was the 'last opportunity'. Hence, the defendant's challenge to the suit notice on this ground also should fail.

In the result, the Revision Application is

dismissed with costs. Rule is discharged. Interim stay is vacated.

sd/=

[Miss R.M Doshit, J.]

Prakash*